FOR ARGUMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-598

THE GREYHOUND CORPORATION AND GREYHOUND LINES, INC.,
Petitioners,

vs.

MT. HOOD STAGES, INC.,
doing business as PACIFIC TRAILWAYS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioners' Reply Brief on the Merits

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INTRODUCTION

Greyhound's opening brief demonstrated that 15 U.S.C. § 16(i) cannot and should not be read to toll the statute of limitations in this action. Mt. Hood's arguments to the contrary ignore the plain language and purpose of the statute, the facts and the applicable principles of law.

Mt. Hood's alternative "equitable tolling" argument makes even less sense, for it stands the concepts of fairness and equity on their heads. It would abrogate the antitrust statute of limitations and confer an undeserved windfall on a plainly dilatory plaintiff.

ARGUMENT

I. The Statute of Limitations Was Not Tolled by 15 U.S.C. § 16(i).

A. THE COURT OF APPEALS' DECISION IS CONTRARY TO 15 U.S.C. § 16(i).

Section 16(i) does not apply to this action, first, because the ICC modification case was "instituted" by Mt. Hood, not the United States. (O.B. 8-9) Mt. Hood does not and cannot dispute that that statutory requirement has not been met.[1] Instead it argues that Congress' clear language should be disregarded because to give it effect would be to adopt a "grudging interpretation" of the statute. (R.B. 14) To support that argument it says that *if* the United States had filed a complaint in district court charging Greyhound with antitrust violations and seeking injunctive relief against it, then Section 16(i) would have applied. (R.B. 15) That statement is certainly true, but just as certainly it is irrelevant. The United States not only did not file such a complaint, it could not have done so. The government had "no way of knowing" the facts (A. 37), and therefore it could not in good faith have made the charging allegations necessary to institute an action.[2] For the same reason, the government neither did nor could have charged Greyhound with any wrongdoing before the ICC, and therefore it neither did nor could have instituted that proceeding either. Thus, the question is not simply one of form—who got to the ICC first; it is one of substance—who had investigated the facts enabling it to make charging allegations and seek relief and thereby to "institute" proceedings. Mt. Hood, not the government, was that party. Therefore, even if it might be proper in some other case to ignore Section 16(i)'s requirement that the government "institute" the proceeding (rather than intervene in it), it would not be proper to do so here.

1. Mt. Hood does say that before the government intervened there was no government civil proceeding but that there was one after it intervened. (R.B. 12-13) That begs the question and proves nothing.

2. What would a district court do with a "complaint" which sought no relief, made no charges and specifically disclaimed any knowledge of the facts? In the absence of any charge of wrongdoing and any claim for relief it is doubtful that a justiciable case or controversy would be presented. *See, e.g., Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 239-41 (1937) (controversy must be "real and substantial . . . admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."); *United States v. West Virginia,* 295 U.S. 463 (1935).

Second, this action is not based on anything "complained of" by the United States because the United States complained of nothing. (O.B. 9) Mt. Hood says that the petition "standing alone 'complained of'" Greyhound's conduct. (R.B. 16) No fair reading of the petition will support that argument. (A. 36-41) The petition does describe the charges made by Mt. Hood (A. 37), but it is careful not to endorse them or to make any charges of its own. The government took no position at all on the merits of the dispute between Mt. Hood and Greyhound; with no knowledge of the facts, it could not have done so. Mt. Hood also says that the government petition asked that "Greyhound's conduct be enjoined". (R.B. 16) That is simply false; there is not one word in the petition asking for relief of any kind. (A. 36-41)

There being no complaint in the government's petition, Mt. Hood is forced to argue that what the government "complained of" should be judged by what action the government in fact took during the course of the entire proceeding and not by what the petition states, citing *Leh v. General Petroleum Corp.*, 382 U.S. 54 (1965). (R.B. 16-17) But *Leh*, and all the other decisions which have addressed the issue, say

precisely the opposite. 382 U.S. at 65. (O.B. 9)[3] There is good reason for that established rule, and it would be unwise to change it. (*See* pp. 8-9 below).

For purposes of this case, however, it does not matter what rule is applied. Neither of the courts below conducted any review of the administrative proceeding to determine what the government did, said or contended following the filing of its neutral petition, and there is nothing in the record from which such a review could be made. In fact, the only evidence relating to the government's participation in the ICC proceeding comes from Mt. Hood's own expert witness, and he concluded that Mt. Hood received "no benefit from what the Government did." (A. 103)[4] Thus, Mt. Hood's numerous statements to the effect that the government "jointly prosecuted" the ICC case with Mt. Hood (R.B. 4, 6, 16, 18) are imaginary; it cites no record support for them and there is none. Mt. Hood's references to the review proceedings before the three-judge court in Chicago (R.B. 5, 11, 16, 18) do not provide that missing sup-

3. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971), also cited by Mt. Hood (R.B. 17), is not to the contrary. Mt. Hood's quotation from this Court's opinion in that case is out of context. The paragraph from which the quotation is taken makes it clear that it does not matter what is proved in a government suit; what matters is the antitrust violation *charged*. 401 U.S. at 335.

4. Mt. Hood implies that Greyhound took an inconsistent position in the District Court (R.B. 19 n.8), but that is not true, and the quotation from Greyhound's memorandum on attorneys' fees is inaccurate. Greyhound argued that the ICC order, which was admitted into evidence, played a large part in plaintiff's success before the jury, but Greyhound did not argue that the government's participation played a part in plaintiff's success before the ICC. (R. 3233) The testimony from Mt. Hood's expert, far from being "inapposite" (R.B. 18-19 n.8), directly related to that issue. Presumably Mt. Hood's purpose in introducing it was to suggest that although Mt. Hood received benefit from the ICC order, that order resulted from the efforts of Mt. Hood, not the government.

port. Those proceedings were instituted by Greyhound *after* the ICC decision and *after* Mt. Hood had filed its complaint in this action, and therefore can have no relevance to the statute of limitations. Moreover, in those proceedings the ICC filed a counterclaim to enforce *its order* (not the antitrust laws). *Greyhound Lines, Inc. v. United States,* 308 F.Supp. 1033, 1034-1035 (N.D. Ill. 1970). The fact that the Justice Department fulfilled its statutory duty to represent the government in such actions, 28 U.S.C. §§ 2321-2323, hardly shows that the United States "complained of" anything during the course of the ICC proceeding leading up to the order being reviewed.

Third, Section 16(i) cannot apply here because the ICC modification proceeding was not a proceeding to "prevent, restrain or punish violations of any of the antitrust laws", regardless of who "instituted" it and regardless of what the government did or did not "complain of". (O.B. 10) Mt. Hood admits that the ICC proceeding was brought under Section 5(10) of the Interstate Commerce Act to enforce that Act by a supplemental order attaching certain conditions to previous ICC Section 5 orders. (R.B. 12 n.3) It argues that Section 16(i) nevertheless applies because the conduct at issue in the ICC proceeding was also in violation of the antitrust laws. (R.B. 8-12) But that determination was made only by the antitrust jury some nine years later. The statute requires that the original proceeding be one to enforce the antitrust laws, which this one was not. Mt. Hood's subsequent civil antitrust litigation did not and could not change the character of the prior, completed ICC proceeding.

Mt. Hood's references to the ICC's power to enforce Section 7 of the Clayton Act (R.B. 11-12) only reinforce the fact that the ICC proceeding involved in this case was

not one in which the ICC did or could enforce the antitrust laws. The ICC did not issue a complaint charging a violation of Section 7. *See* 15 U.S.C. § 21. It heard Mt. Hood's charges under Section 5 of the Interstate Commerce Act, pursuant to which it must consider, but neither enforces nor is bound by, the policies of the antitrust laws. *McLean Trucking Co. v. United States,* 321 U.S. 67, 79, 86 (1944). (O.B. 10)[5] Intervention by the United States did nothing to change the nature of the ICC proceeding. (O.B. 8) The Justice Department itself clearly distinguishes its intervention and participation in regulatory proceedings in which the public interest requires "consideration" of antitrust policies from its activities to enforce the antitrust laws. *Compare* 28 C.F.R. § 0.40, paragraph (b) (1977) (intervention) with *Id.,* paragraph (a) (enforement). *See* Statement of John H. Shenefield, Assistant Attorney General, Antitrust Division, before House Comm. on the Judiciary, March 21, 1978, CCH Trade Reg. Rep. No. 326, Part II, pp. 17-18, 50 (March 27, 1978). Plainly the Justice Department was doing the former and not the latter in this case.

Finally, the government's petition was not granted until May 27, 1965, and, even if all of Greyhound's other arguments are wrong, that is the earliest date on which it

5. None of the cases cited by Mt. Hood on page 11 of its brief is to the contrary. Indeed, *United States v. ICC,* 396 U.S. 491 (1970), states that the "role of antitrust policy under § 5" was "comprehensively and dispositively" treated in *McLean.* 396 U.S. at 511. The quotation from *Denver & R.G.W.R.R. v. United States,* 387 U.S. 485 (1967), is out of context. *Denver* merely holds that the ICC must give consideration to antitrust policies when exercising its power under Section 20a of the Interstate Commerce Act.

Nor can Mt. Hood gain any comfort from those lower court decisions which hold Section 16(i) applicable to FTC proceedings brought to enforce Section 5 of the Federal Trade Commission Act. (R.B. 8) Those cases—even if correctly decided—are easily distinguishable, as Greyhound's opening brief demonstrates. (O.B. 13-14 n.11)

could be said that any Section 16(i) tolling commenced. (O.B. 10-12) Mt. Hood dismisses this point in a footnote, citing cases based on the principle that one who has filed a petition to intervene giving notice of his claim should not be barred if the court does not grant his petition before the statute of limitations runs. (R.B. 13 n.4) But those cases do not address the point. The point is not that the government's petition was "untimely" or that the government should have been barred from participating in the ICC proceeding. The point is that Section 16(i) must be interpreted consistent with its purpose—to provide private litigants with the benefits of the government's antitrust enforcement efforts. (O.B. 11) The government could take no antitrust enforcement efforts in the ICC proceeding until its petition was granted; accordingly, no benefits from any such efforts could have resulted to Mt. Hood until then. The date on which the petition to intervene was filed simply does not bear any logical relationship to the language or purpose of Section 16(i); therefore, it does not bring the statute into operation. *See Dungan v. Morgan Drive-Away, Inc.,* No. 76-2681 (9th Cir. Jan. 13, 1978). (O.B. 11-12; *Id.*; App. B p. 9)[6]

The Court of Appeals' interpretation of Section 16(i) is contrary to the clear language of the statute in every respect.

B. THE COURT OF APPEALS' DECISION IS CONTRARY TO CONGRESS' INTENT AND SOUND POLICY.

Not only is the decision below inconsistent with the clear language of the statute, it is also contrary to Congress' intent. (O.B. 13-17) The purpose of Section 16(i) is to

6. Although *Dungan* is clearly an important decision on the interpretation of Section 16(i), Mt. Hood's brief does not discuss it or even acknowledge its existence.

permit private litigants to ride the coattails of prior government antitrust enforcement efforts—efforts which did not occur here. Surely Congress did not intend Section 16(i) to be used, as it was here, to permit a private litigant to ride its *own* coattails.

Moreover, the Court of Appeals' "functional equivalent" test is bad policy. To make the application of Section 16(i) turn on what transpired during the course of government actions would mean that it might be impossible to tell whether the statute had been tolled until after those actions had finally concluded. It would resurrect the very uncertainty and unpredictability which Congress sought to avoid. It would also require a detailed review of the record of the prior proceedings to determine what had in fact transpired, thereby adding more complexity and new burdens to already overburdened courts and litigants. (O.B. 13-17)

It is no answer to say—as Mt. Hood does—that Congress could have achieved greater certainty and predictability by repealing Section 16(i). (R.B. 20) The question is how to interpret the statute consistent with its language, Congress' purpose and sound policy. Mt. Hood also claims that the decision below does not create uncertainty, but its characterization of the holding is simply a paraphrase of Section 16(i) and does nothing to eliminate the difficulties that decision creates. (R.B. 19) It does not answer the questions of what constitutes "government action" or when it is "for the purpose of preventing a violation of the antitrust laws" or when a matter has been "complained of" in the government action. For example, would the government's participation in *Denver & R.G.W.R.R. v. United States*, 387 U.S. 485 (1967), toll the statute of limitations under the Court of Appeals' opinion? If it would, for what period of time and as to what issues would the statute be

tolled? And how would a district court go about answering these questions?

Under the Court of Appeals' decision in this case, the only way around these problems is to say that the statute is tolled any time the Antitrust Division participates in any regulatory proceeding regardless of what it contends or does in the proceeding.[7] Even Mt. Hood cannot deny that that result would be highly undesirable. (O.B. 17-18) Instead, it suggests that such a result can be avoided because "the facts of this case are *sui generis*". (R.B. 20) But Mt. Hood offers no insight as to how this case, in which the government filed a neutral position to intervene, can be distinguished from the countless other cases in which the government participates in a similar manner.

Rational distinctions concerning the government's participation in regulatory proceedings can be made. For example, it might be appropriate in a given case to apply Section 16(i) where the government's petition to intervene in fact charged a violation of the antitrust laws and in fact demanded relief to prevent, restrain or enjoin that violation. To hold Section 16(i) applicable to this case, however, would preclude that type of distinction from being drawn in the future.[8]

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7. Such participation by the Antitrust Division has been extensive (*see* Petition for Certiorari, App. F) and is likely to continue at a high level. Statement of John H. Shenefield, Assistant Attorney General, Antitrust Division, before House Comm. on the Judiciary, March 21, 1978, CCH Trade Reg. Rep. No. 326, Part II, pp. 17-18, 50 (March 27, 1978).

8. Mt. Hood says that failure to apply Section 16(i) will necessitate duplicative filings (R.B. 21), but that is not so. Mt. Hood chose to attack Greyhound under two different statutes requiring proceedings before two different tribunals, and two proceedings were required regardless of whether the statute was tolled. Moreover, Mt. Hood's pursuit of its ICC claims does not excuse its failure to act diligently with respect to its antitrust claims. *See Johnson v. Rail-*

II. The Statute of Limitations Was Not Tolled by Any Equitable Doctrine.

Although this Court limited its grant of certiorari to the Section 16(i) issue (A. 142), Mt. Hood argues in the alternative that the statutory damage period should be extended from four to twenty years to "prevent injustice." (R.B. 23) Mt. Hood's "equitable tolling" theory should be rejected for several reasons: (1) there isn't a shred of equity in Mt. Hood's position; (2) it is not supported by any known authority and is inconsistent with the Court's decision in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975); (3) it is inconsistent with Mt. Hood's argument that Congress has specified the extent to which the antitrust statute of limitations may be tolled and, therefore, courts should not meddle (R.B. 20); and (4) it would effectively convert a specific statute of limitations into a vague laches doctrine to be invoked whenever a plaintiff could think up some excuse for failure to file an action within the statutory period.

To put Mt. Hood's argument in perspective it is necessary at the outset to correct the false impressions that appear from reading its brief.

Mt. Hood repeatedly proclaims that in pursuing its claims it was "diligent." (R.B. 15-16, 22, 25, 31-32) That contention is central to its equitable tolling argument because it would hardly be inequitable to apply the normal statutory limitations period to a plaintiff which has not been diligent. But in arguing that it was diligent Mt. Hood is playing with facts of its own invention, not those established by the jury's findings. Mt. Hood filed its ICC pro-

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way Express Agency, Inc., 421 U.S. 454 (1975) (pursuit of Title VII claim does not excuse delay in filing action under 42 U.S.C. § 1981).

ceeding in 1964, which it says was immediately after Greyhound cancelled the joint-through bus (R.B. 22), but the jury found that it knew or should have known of its alleged claims against Greyhound in 1960. (A. 82) To wait four years is not to act with diligence. Moreover, Mt. Hood did not file its complaint here until July 5, 1968, some seven-and-a-half years after it knew of those claims. Mt. Hood says that this was shortly after the ICC's first decision (R.B. 31-32), but fails to point out that the date on which it finally filed its complaint was just *two days* short of four full years from the date Greyhound gave notice of cancellation of the joint-through bus. (A. 46, R. 1; Ex. 359, Tr. 1173) In other words, far from acting with diligence, Mt. Hood could hardly have waited any longer than it did.

Mt. Hood seeks to rationalize its delay by implying that its course of action was compelled because the federal court could not grant injunctive relief, but how does that excuse its delay in filing its claim for damages? And, if Mt. Hood truly relied on its stated inability to obtain an injunction from the federal court, why did it seek such relief when it finally did file its complaint in 1968? (A. 46, 55)

Mt. Hood also suggests its delay is excusable because it consciously chose to proceed as it did in reliance upon and out of respect for the doctrine of primary jurisdiction. (*See, e.g.*, R.B. 22, 27) Of course, Mt. Hood's rationalizations would not excuse its failure to file its complaint even if they were accurate. But they are not accurate; they obviously were thought up by counsel long after the actual events. Thus, contrary to Mt. Hood's statements that it "had no choice of forum" (R.B. 22), that the ICC proceedings were "a condition precedent" to this action (R.B. 24), that "the District Court's doors [were] closed . . ." (R.B. 25) and that its course of action was "virtually mandated"

(R.B. 27), Mt. Hood in fact was free at any time to file its antitrust action and stop the running of the statute. It simply did not do so.

Mt. Hood also states that in 1964 when it "had to act" it was "confronted by a wall of precedent" which gave it "every reason to conclude" that a simultaneous action would have been dismissed, implying that it relied on the Ninth Circuit decision in *Carnation Co. v. Pacific Westbound Conference*, 336 F.2d 650 (9th Cir. 1964). (R.B. 28-29 and n.13) But this Court reversed *Carnation* on the very point on which Mt. Hood supposedly had relied, *Carnation Co. v Pacific Westbound Conference*, 383 U.S. 213, 222-223 (1966), and thus Mt. Hood's argument, which does not even note that reversal, seems contrived. Moreover, even if Mt. Hood had relied on that reversed decision, it would not be fair to impose on Greyhound the costs of its error.[9] In truth Mt. Hood neither considered nor relied upon primary jurisdiction considerations in the timing of the filing of its complaint. Its President, Mr. Niskanen, testified that he did not even consult a lawyer with respect to a private action against Greyhound until 1968, almost four years after the ICC proceedings were commenced and nearly eight years after Mt. Hood knew of its antitrust claims. (Tr. 3774) Thus, Mt. Hood's primary jurisdiction

9. Even if a court had dismissed Mt. Hood's complaint, it is extremely unlikely that it would not have provided some statute of limitations protection. Mt. Hood argues that it is "no answer for Greyhound to speculate" as to what a court might have done (R.B. 29 n.13) but it is Mt. Hood's position, not Greyhound's, which rests on speculation. Mt. Hood could have filed its case and found out what the court would do. It failed even to try.

Nor does Mt. Hood explain why it "had to act" in 1964. It had known of its claims since 1960 (A. 82), and it plainly could have "acted" in 1961, 1962 or 1963. It also could have acted in 1966 or 1967, after this Court reversed the Ninth Circuit decision in *Carnation*.

rationalization for its lack of diligence is purely a lawyer's afterthought, and even its own lawyers did not think of it until after the trial.[10]

Mt. Hood attempts to raise some equity for its position by stating that tolling is required to "preserve" and to avoid a "forfeiture of its damage claim." (R.B. 24 n.11, 26, 28) But there is no threat of any "forfeiture" here. The question is whether Mt. Hood's claim will reflect the normal four-year period Congress has mandated or whether that period will be multiplied five-fold. The jury found that Mt. Hood had suffered actual damages of $4,382,030 over the entire period from 1953 to 1973, with $2,650,491 of the total attributable to the period about which there is no statute of limitations issue. (A. 83) Accordingly, even if Mt. Hood loses on its tolling claims, it still stands to recover $7,951,473, nearly double the amount of its *total* actual losses as found by the jury. To recover double damages is not an "inequity", an "injustice" or a "forfeiture".

Plainly there is no equity in Mt. Hood's position from which to argue that its windfall recovery should be increased. Nor is there any case authority to support that position; in fact it is repudiated by *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975).[11]

In *Johnson*, the Court refused to hold the statute of limitations tolled on petitioner's race discrimination claim

10. The first suggestion of Mt. Hood's "equitable tolling" theory in this case was in its post-trial brief filed September 2, 1973, more than five years after the action was commenced. (R. 2443, 2653-2659)

11. None of the other cases cited by Mt. Hood supports its equitable tolling argument on the facts here:

Burnett v. New York Cent. R.R., 380 U.S. 424 (1965), involved an injured railroad worker, who through ignorance, filed his FELA action in a state court lacking venue. By the time he learned of his error and filed the identical complaint in a proper federal court, the statute of limitations

under 42 U.S.C. § 1981 during the period he was pursuing his EEOC administrative remedies which were a prerequisite to his filing a Title VII case. Both claims were based upon the same facts. The petitioner argued that failure to toll the statute would "conflict seriously with the broad remedial and humane purposes of Title VII" and would "force a plaintiff into premature and expensive litigation that would destroy all chances for administrative conciliation and voluntary compliance." 421 U.S. at 465. In rejecting those arguments, the Court pointed out that plaintiff could have filed his § 1981 suit and asked the court to stay it pending completion of administrative efforts at conciliation and voluntary compliance. The Court then noted the "fundamental answer to petitioner's argument": That petitioner could have filed his § 1981 action at any time after the cause of action accrued. 421 U.S. at 456-466.

had run. Under these circumstances, and in light of Congress' "purposes in enacting this humane and remedial Act," the Court held that plaintiff's filing of his action, albeit in the wrong court, tolled the statute of limitations. 380 U.S. at 427-428. Here, Mt. Hood asserts that its decision to proceed first in the ICC was deliberate, not inadvertent, and it was aware of its right to file its antitrust case at any time to stop the running of the statute.

American Pipe & Constr. Co. v. Utah, 414 U.S. 538 (1974), simply held that where class action status has been denied solely because of failure to demonstrate the requisite numerosity of members, the commencement of the original class action tolls the statute for those members of the class who make timely motions to intervene after the denial of class action status. 414 U.S. at 552-553.

The issue in *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342 (1944), was whether a state statute of limitations barred an action to enforce an award of the Adjustment Board under the Railway Labor Act where the action was filed within the time specified in the Act for bringing such actions. The Court held that the state statute was not even applicable, and that, in any event, "[a] state statute of limitations can hardly destroy a claim because the period of actual contest over it in a federal tribunal extends beyond the limitation period." 321 U.S. at 348.

The Court then concluded: "We find no policy reason that excuses petitioner's failure to take the minimal steps necessary to preserve each claim independently." 421 U.S. at 466. Each of those points applies with equal or greater force here to compel rejection of Mt. Hood's equitable tolling argument.

Moreover, in *Johnson*, the Court explained that "the tolling effect given to the timely prior filings in *American Pipe* and in *Burnett* depended heavily on the fact that those filings involved exactly the same cause of action subsequently asserted." 421 U.S. at 467. As the Court said:

> "Only where there is complete identity of the causes of action will the protections suggested by petitioner necessarily exist and will the courts have an opportunity to assess the influence of the policy of repose inherent in a limitation period." 421 U.S. at 468, n.14.

Mt. Hood's ICC proceeding for a supplemental order in acquisition proceedings under the Interstate Commerce Act did not assert "exactly the same cause of action subsequently asserted" in this antitrust case; therefore, that ICC proceeding did not give Greyhound the notice to which it was entitled and it could not have "operated to avoid the evil against which the statute of limitations was designed to protect." 421 U.S. at 467.

Mt. Hood's equitable tolling theory is also at odds with the position it took with respect to Section 16(i). There it argued that Congress has enacted a statute of limitations and a tolling provision (Section 16(i)) and that this Court should not "do that which Congress has not yet chosen to do." (R.B. 20) If that is so, it follows a fortiorari that Mt. Hood itself should not be asking the Court to develop a broad equitable tolling concept to circumvent the statutory provisions Congress has enacted.

Finally, Mt. Hood's theory would make application of the statute of limitations an equitable issue in a vast number of cases—every time plaintiff's counsel could think of an explanation for not having filed sooner. That would create uncertainty as to the statute of limitations and increase the volume and scope of antitrust litigation to an even greater degree than would Mt. Hood's expansive interpretation of Section 16(i). All the policy reasons that militate against expanding Section 16(i) apply with even greater force to condemn adoption of "equitable tolling" in this case. (pp. 7-9 above)

The effect of tolling here would be to reward the stale claims of a party that deliberately and unjustifiably delayed bringing an action on its claims for nearly twice as long as the statute permits. It is not at all inequitable or unjust that Mt. Hood's claims be limited to the four-year period Congress has declared appropriate in antitrust cases. Congress has determined that trebling four years' worth of damages is more than enough incentive for private litigants to enforce the antitrust laws. The Court should not second-guess that judgment.

CONCLUSION

The judgment of the Court of Appeals should be reversed and the case remanded with instructions to eliminate any claim or award of damages for the period prior to July 5, 1964, and for further proceedings consistent with the decision.

Respectfully submitted,

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